

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 26, 2006

Opposition No. 91161944

LABELTEX MILLS INCORPORATED

v.

Labeltex S.r.l.

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposer's motion to extend discovery, filed November 18, 2005. Applicant has filed a response in opposition thereto.

In support of its motion, opposer advises that it needs additional time to complete discovery because opposer received more than 400 documents from applicant, an Italian company, that required translation; that the translations were delayed for some time while awaiting applicant's explanation of certain terms; that it will take additional time to complete the translations as well as review the translations to determine what other discovery is needed, to address other discovery matters, and take depositions; and that "intercontinental logistics" and "dissimilar commercial and legal practices inveigh against efficient prompt handling of discovery matters."

In response, applicant argues that opposer had ample time to serve a second set of discovery requests and for discovery; that opposer's arguments for needing an extension are "unfounded" as opposer has had the documents for many months and there is very little text in Italian that needs translation; that opposer, on July 28, 2005, requested information regarding the meaning of terms CART, DDT, IMP, IMPI and EDC and counsel explained their meaning in a letter dated October 26, 2005; that even admitting that applicant needed an explanation of these terms, applicant had ample time to serve additional discovery requests; and that because both parties had sufficient time to complete discovery, opposer's "unjustified delay" "should not be rewarded" and no further extensions should be granted.

In reply, opposer states that the issue is not whether there were numerous documents which required translation but whether opposer had an opportunity to conduct meaningful discovery. Opposer asserts that it served its first set of discovery requests on November 1, 2004, but did not receive the responses and documents until June 25, 2005 because applicant advised that it was having difficulty in obtaining the documents from applicant; that applicant provided 382 documents containing "significant entries" in Italian and 31 documents were completely in Italian, so on July 28, 2005, opposer asked applicant for translations because the

documents provided were "unintelligible"; that applicant refused to provide a translation of the documents so opposer obtained its own translator in July 2005; that opposer's translator advised that the translations could not be completed without an explanation of the meaning of certain abbreviations; that despite opposer's efforts to obtain the translations of the abbreviations, they were not forthcoming until October 26, 2005; that shortly thereafter, counsel sought a further extension of discovery and testimony periods which the parties had previously discussed so as to conduct additional discovery and take depositions, but on November 17, 2005, applicant advised that it did not agree to an extension of the discovery period.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. Fed. R. Civ. P. 6(b). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See e.g., American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

Upon consideration of the parties' arguments, the Board finds that opposer has shown good cause for its request to extend. Opposer clearly did not delay in seeking discovery, serving its first set of discovery requests less than 2

months after discovery opened. Further, applicant appears to be largely responsible for the delays in opposer obtaining the discovery sought by not providing responses for the November 2004 discovery requests until the end of June 2005 and not providing additional information to assist opposer in translating the Italian portions of the documents provided until late October 2005 so that opposer could determine whether additional discovery was needed.

Accordingly, the Board finds good cause for granting the motion to extend. Moreover, the Board finds that opposer has not abused the privilege of extensions and there is no evidence of bad faith by opposer. In view thereof, opposer's motion to extend the discovery and testimony periods is granted.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: April 24, 2006

30-day testimony period for party in position of plaintiff to close: **July 23, 2006**

30-day testimony period for party in position of defendant to close: **September 21, 2006**

15-day rebuttal testimony period for party in position of plaintiff to close: **November 5, 2006**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.